

**REMARKS**

Claims 1-12, 23-35, 39, 40, 43, 44, 47-49 and 51 are pending in this application. The Office Action withdraws previously canceled claims 13-22, 36-38, 41-42, 45-46 and 50; rejects claims 23-25, 34, 40, 43 and 47 under 35 U.S.C. §102(e); and objects to claims 26-33, 44 and 48. By this Amendment, Applicants amend claims 23 and 40 and add new claim 51. Support for the amendments can be found, for example, in the specification at paragraph [0020].

Applicants thank the Examiner for indicating the allowability of instant claims 26-33, 44 and 48 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**I. Rejection Under 35 U.S.C. §102(e)**

The Office Action rejects claims 23-25, 34, 40, 43 and 47 under 35 U.S.C. §102(e) as anticipated by Shibata. The Office Action asserts that Shibata discloses each feature of the foregoing claims. Applicants amend claims 23 and 40, from which claims 24, 25, 34, 43 and 47 depend, and add new claim 51.

Instant independent claims 23, 40 and 51 recite "and the electrolyte layer has proton conductivity." This feature allows, for example, protons to move through the electrolyte layer and combine with oxygen and electrons at the oxygen electrode to produce water. See specification at paragraph [0020]. Shibata nowhere discloses this feature and thus does not anticipate instant claims 23, 40 or 51. Moreover, newly added claim 51 further recites "wherein the hydrogen permeable material is permeable only to hydrogen." Shibata also fails to disclose this feature and thus does not anticipate instant claim 51.

In contrast, Shibata discloses an electrolyte layer having oxygen ion conductivity. See Shibata at, for example, paragraph [0049]. Thus, if the teachings of Shibata were incorporated into an apparatus containing the instantly claimed features, water would be

produced between the hydrogen permeable material and the electrolyte layer, yet the water would not be discharged due to density of Shibata's hydrogen permeable material. Thus, Shibata does not anticipate the features of instant claims 23 or 40 from which claims 24, 25, 34, 43 and 47 variously depend, and the apparatus would be inoperable if Shibata's teachings were incorporated therein. Shibata also nowhere discloses a hydrogen permeable material that is permeable only to hydrogen.

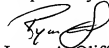
For at least the foregoing reasons, instant independent claims 23, 40 and 51, and all claims depending therefrom, are not anticipated by Shibata. Reconsideration and withdrawal of the rejection are earnestly solicited.

## **II. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-12, 23-35, 39, 40, 43, 44, 47-49 and 51 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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